

BEFORE THE APPELATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI

APPEAL NO. AT-20/2020

M/S Gemnet Enterprise Solution (Pvt) Ltd.
Karachi.....Appellant

Versus

Commissioner (Appeals-1), SRB,
Karachi.....Respondent

Date of Filing of Appeal: 04.06.2020.
Date of Hearing of Appeal: 08.10.2020
Date of Order: 19.10.2020

Mr. Sibte Asif, ITP and Mr. Sajid Zuberi, Advocate, for Appellant.

Mr. Zain Manzoor, AC and Ms. Uzma Ghory, AC-DR, SRB for Respondent.

ORDER

Justice (R) Nadeem Azhar Siddiqi: This appeal has been filed by the appellant/taxpayer challenging the Order-in-appeal (hereinafter referred to OIA) No. 39/2020 dated 13.03.2020 passed by the Commissioner (Appeals-I) upholding the Order-in-Original (hereinafter referred to OIO) No. 176/2019 dated 07.03.2019 passed by the Assistant Commissioner (Mr. Vickey Dhingra), SRB, Karachi.



02. In short, the facts of the case as stated in OIO are that the services provided or rendered in respect of telecommunication including internet services are chargeable to the Sindh Sales Tax ("SST") under section 8 read with Tariff Heading 98.12 and sub-tariff headings thereof of the Second Schedule to the Sindh Sales Tax on

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Page 1 of 6

Services Act, 2011 (hereinafter referred to as the Act) at the rate of 19.5% w.e.f. 01.07/2013 till 30.06.2015, @ 18% w.e.f. 01.7.2.15 till 30.06-2016, @ 19% w.e.f. 01.07.2016 till 30.6.2017 and @ 19.5% w.e.f. 01-07-2017.

03. It was alleged in the OIO that the respondent was engaged in providing and rendering aforesaid taxable services and was registered with SRB since 16.12.2013. The scrutiny of audited financial statements for the year ended June, 2014, June 2015, June 2016 and June 2017 (i.e. tax periods from July 2013 to June 2017) revealed that the respondent had provided the aforesaid taxable services and received the consideration of Rs.53,460,187/= whereby the SST worked out to be Rs.10,020,061/=. However, perusal of their tax returns revealed that respondent have declared the output tax of Rs.7,618,399/= only with SRB, thus it had short declared/paid the tax amounting to Rs.2,401,662/=. Details are given in the following table:

Description	2016-17	2015-16	2014-15	2013-14	Total
Internet Sales	8,431,982	13,051,380	9,169,464	2,029,463	32,682,289
Data Sales	14,075,127	-			14,075,127
Reimbursement cost	1,201,900	760,825			1,962,725
Support & Maintenance	12,000	60,000			7,000
OTC Income	20,000	-	960,739	1,156,060	2,136,799
Hardware/Supplies	20,000	106,15			106,176
Total	23,741,009	13,978,380	11,305,503	3,435,295	52,460,187
Rate of tax	19.5%	18%	19.5%	19.5%	
Tax Amount	4,629,497	2,516,108	2,204,573	669,883	10,020,061
Less: Declared With SRB	(3,246,421)	(2,289,322)	(1,641,031)	(441,625)	(7,618,399)
Short Declared	1,383,076	226,786	563,542	228,258	2,401,662



04. Moreover, perusal of their tax returns for the tax periods July, 2013 to June, 2018 revealed that the respondent had claimed the input tax of Rs.8,144,021/=. Further scrutiny of their tax returns for tax periods March, 2016 to June, 2018 revealed that they had declared the services valued at Rs.13,890,667/= as zero rate

services. Whereas under the said Act and the notifications issued thereunder there no service which was liable to zero rated.

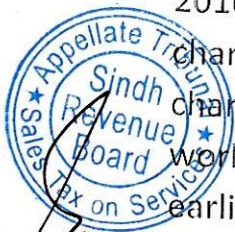
05. A Show-Cause Notice (SCN) dated 27.11.2018 was served upon the appellant for assessment of tax amounting to Rs.2,401,662/= and Rs.8,144,021/= respectively under section 23 of the Act along with default surcharge and imposition of penalty under serial No.3, 6 (d) and 11 of the Table under section 43 of the Act.

06. Finally the order in original was passed levying SST at Rs.2,500,252/= along with default surcharge and penalty of Rs.125,013/= for contravention of Rule 3 (1) of the Withholding Rules-2014, Rs.125,013/= under serial No.3 and 11 respectively of the Table under section 43 of the Act.

07. The appellant challenged the OIO before the Commissioner (Appeals), who upheld such order levying SST at Rs.2,331,055/= and the default surcharge. The Commissioner (Appeals) also upheld the penalties imposed in the OIO.

08. The learned representative of the appellant contended that the tax periods from July, 2013 to June, 2014 was covered in the earlier OIO No. 294 of 2015 dated 25.05.2015 and OIA No. 27/2016 dated 10.03.2016 and cannot be subject matter of another SCN. He then contended that for the tax periods July, 2016 to June, 2017 the rate of tax was 19%, whereas the tax was charged at the rate of 19.5%. He also submitted that tax was also charged on the cost of material and supplies the value of which works out to Rs.2.1 million and this ground was also taken in earlier OIA No. 27/2016 and the contention of the appellant was upheld by Commissioner (Appeals).

09. The learned representative of SRB submitted that tax periods from June, 2013 to July, 2014 was already assessed and liability in this regard was deleted from the final liabilities. He further submitted that rate of tax for the tax periods July, 2016 to June, 2017 was



19% and the rate of tax was corrected before Commissioner (Appeals) and such relief was already provided to the appellant.

10. To resolve the controversy the learned AC was directed to file Reconciliation Statement. The AC filed Reconciliation Report dated 08.10,2020 reducing the tax liability from Rs.2,331,055/= which was upheld by Commissioner (Appeals) to Rs. 603,737/=. He also reduced default surcharge and penalties under Sr. No. 3 and 11 of the Table under section 43 of the Act levying total SST Rs.664,111/- excluding default surcharge. The Reconciliation Report submitted by AC is reproduced as under:-

RECONCILIATION REPORT ON DIRECTIONS OF APPELATE TRIBUNAL SRB :

After reconciliation of exempt services the following table is amended for the final sales tax liability.

Description	2016-17	2015-16	2014-15	Total
Internet Sales	8,431,982	13,051,380	9,169,464	30,652,826
Data Sales	14,075,127	-		14,075,127
Reimbursement cost	1,201,900	760,825		1,962,725
Support & Maintenance	12,000	60,000		72,000
OTC Income	-	-	1,175,300	1,175,300
Hardware/ Supplies	20,000	-	960,739	980,739
Other Income	-	106,175	-	106,175
Total	23,741,009	13,978,380	11,305,503	49,024,892
Less Exempt Sales	5,696,000	1,254,000	980,000	7,930,000
	18,045,009	12,724,380	10,325,503	41,094,892
Rate of tax	19%	18%	19.50%	
Tax Amount	3,428,552	2,290,388	2,013,473	7,808,029
Less: Declared with SRB	3,246,421	2,289,322	1,641,031	7,176,774
Short Declared	182,131	1,066	372,442	555,639



FINAL TABLE:

S.No	Description	Total payable as per ONO	Reconciled Amount	Un-reconciled / Payable Amount	Remarks
1	Short Declared F.Y 2013-14 to 2016-17	2,401,662	1,846,023	555,639	Amount Rs. 118,705/- is decreased due to SST rate prevailed in the F.Y 2016-17 was 19%, however, in ONO the tax

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					rate was calculated inadvertently @ 19.5% and liability pertains to year 2013-14 is deleted. Exempt sales of Rs.1499060/- was also reconciled from the total sales tax liability.
2	Withholding of SST allowed by the appellant to their service recipients	96,612	56,088	40,524	WHT amount with respect to M/s Rainbow Hi Tech Engineering Company (Pvt) Ltd and M/s Jamshoro Power Company Limited are duly reconciled
3	Withholding by the appellant as service provider	7,574		7,574	
Total Amount (Principal)		2,505,848	1,902,111	603,737	
4	Penalty u/s 43(3)			30,187	
5	Penalty u/s 43(11)			30,187	
Total Penalty				60,374	
Total payable (excluding default surcharge u/s 44)				664,111/-	

11. The learned representative of the appellant after going through the reconciliation has agreed to pay the reconciled amount of tax of Rs.603,737/=. He however, has disputed the imposition of default surcharge and penalties and submitted that the same were imposed in contravention to the judgments of the superior courts and without establishing mensrea on the part of the appellant. He also submitted that the default if any was not willful and deliberate as there was dispute on this account between the parties.



12. We have heard the learned representatives of the parties and perused the record made available before us.

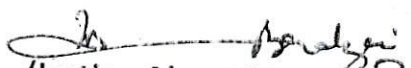
13. The allegation against the appellant was that it had provided or rendered telecommunication services falling under Tariff Heading 98.12. The AC in the SCN has only mentioned Main Tariff Heading 98.12 and has failed rather avoided to mention specific Sub-Tariff Heading under which the services provided or rendered by the appellant fell. The providing or rendering of internet services were covered by Sub-Tariff Heading 9812.6000.

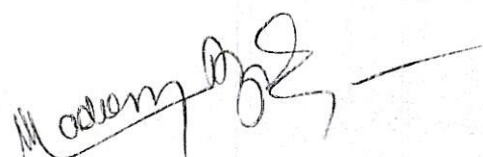
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14. Non-mentioning of specific Tariff Heading fatally weakens the case of the department. In our various orders we have highlighted the necessity of quoting/mentioning of specific Sub-Tariff Heading. Non-mentioning of specific Sub-Tariff Heading is also against the Judgment of the Sindh High Court in the case of Citibank NA Vs Commissioner Inland Revenue 2014 PTD 284.

15. In view of the above discussions, considering the Reconciliation submitted by the learned AC and the consent of the appellant the appeal is partly allowed and the OIO and OIA are maintained to the extent of Rs.603,737/= alongwith default surcharge. However in case the appellant fails to pay the principal amount of tax and default surcharge within fifteen days from the date of receipt of this order it will also be liable to pay penalties as mentioned in the Final Reconciliation Report.

16. The appeal is disposed of in terms of para 15 above. The copy of the order may be provided to the learned representatives of the parties.


(Imtiaz Ahmed Barakzai)
Technical Member


(Justice® Nadeem Azhar Siddiqi)
Chairman

Karachi.
Dated: 19.10.2020

Certified to be True Copy

Copy for compliance:

- 1) The Appellant through authorized Representative.
- 2) The Assistant Commissioner (Unit-), SRB, Karachi.


REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Copy for information to:-

- 3) The Commissioner (Appeals), SRB, Karachi.
- 4) Office Copy.
- 5) Guard File.

Order issued on 21/10/2020

Order Dispatched on 21/10/2020

Registrar
Page 6 of 6